APPENDIX A

Order of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department Affirming Order Below

At a Term of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, held in Kings County on June 15, 1970.

HON. SAMUEL RABIN,
Acting Presiding Justice,

HON. JAMES D. HOPKINS,
HON. FRED J. MUNDER,
HON. M. HENRY MARTUSCELLO,
HON. ARTHUR D. BRENNAN,
Associate Justices.

In the Matter of

EUGENE GOLD, District Attorney of the County of Kings,

Respondent,

—v.—

PHILIP RASTELLI,

Appellant.

ORDER ON APPEAL FROM ORDER

In the above entitled cause, the above named Philip Rastelli, a party, having appealed to this court from an order of the Supreme Court Kings County, dated April 30, 1970; and the said appeal having been argued by William Sonenshine, Esq., of counsel for the appellant, and submitted by Irving P. Seidman and David H. Katz, Esqs., of counsel for the respondent, and due deliberation having been had thereon; and upon this court's decision slip heretofore filed and made a part hereof, it is:

Ordered that the order appealed from is hereby unanimously affirmed, without costs.

Enter:

Herman M. Pogul
Clerk of the Appellate Division

APPENDIX B

Order of the Supreme Court of the State of New York, County of Kings, Adjudging Petitioner in Contempt of Court

At a Criminal Term, Part I of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof, Civic Center, Borough of Brooklyn, City of New York, on the 30th day of April, 1970.

Present:

HON. JULIUS HELFAND,

Justice.

In the Matter of the Application

of

EUGENE GOLD, DISTRICT ATTORNEY OF THE COUNTY OF KINGS, FOR AN ORDER DIRECTING

PHILIP RASTELLI

A WITNESS BEFORE A KINGS COUNTY GRAND JURY TO RETURN TO THE GRAND JURY AND ANSWER PROPER AND LEGAL INTERROGATORIES OR IN THE EVENT THE WITNESS SHOULD REFUSE TO OBEY SAID DIRECTION PUNISHING THE WITNESS FOR A CRIMINAL CONTEMPT FOR A WILFUL, CONTUMACIOUS AND UNLAWFUL REFUSAL TO OBEY A DIRECTION OF THIS COURT TO RETURN TO SAID GRAND JURY AND ANSWER PROPER AND LEGAL INTERROGATORIES

It appearing to the satisfaction of this Court that at the May 1968 Term of this Court, Part I thereof, a 4th additional Grand Jury for the County of Kings and for the Court was duly impaneled, and that the said Term of the Court and of the said Grand Jury has been duly extended to May 29, 1970, and that the said Grand Jury was and is now duly in existence;

And it further appearing to the satisfaction of this Court that the said Grand Jury was and is lawfully in session and was and is investigating to determine whether there existed in the County of Kings a criminal conspiracy, to commit the crime of murder, and other related crimes in an effort to succeed one Joseph Bonanno as head of an organized crime syndicate in Kings County.

And it further appearing to the satisfaction of this Court that the Police Department of the City of New York and the District Attorney of Kings County, have obtained information which alleges and indicates that the crime of conspiracy to commit murder, and other related crimes have been committed in Kings County as part of an internecine struggle to succeed Joseph Bonanno as head of an organized crime syndicate in Kings County;

And it further appearing to the satisfaction of this Court that the witness above named, duly appeared as a witness before the Grand Jury and said investigation on the 5th day of February, 1970 and said witness was thereupon duly sworn to tell the truth;

And it further appearing to the satisfaction of the Court that the said witness had refused to answer any questions put to him before the said Grand Jury upon the ground that his answer might incriminate him;

And it further appearing to the satisfaction of this Court that thereupon in the form and manner provided by law, immunity from the prosecution was duly conferred upon the witness;

And it further appearing to the satisfaction of this Court that thereafter on the 5th day of February, 1970, the said witness returned to the said Grand Jury room and was informed that he had been granted full and complete immunity pursuant to law; that questions were propounded to the said witness, which said questions were pertinent, relevant and material to the said investigation then and there being conducted before the said Grand Jury; a copy of the proceedings before the Grand Jury on February 5, 1970, containing the questions propounded to the witness and his answers thereto being set forth herein as Exhibit "A";*

And it further appearing to the satisfaction of this Court that the said witness refused to answer said questions or any other pertinent, relevant and material questions upon the ground that the answer might tend to incriminate him despite the fact that immunity had been duly conferred upon the said witness as hereinabove recited;

And it further appearing to the satisfaction of this Court that thereupon on the 27th day of April 1970, at the request of the said Grand Jury, the District Attorney applied to this Court at Part 1 thereof before the undersigned for a direction and order overruling the objection of the said witness and for a direction and order that the grant of immunity to the said witness was coextensive with

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* Reference is to Grand Jury Proceedings of February 5, 1970. Same are annexed to this petition as Appendix I.

his privilege against self-incrimination with respect to any and all crimes, transactions, matter or things his testimony may disclose before the said Grand Jury, and that his refusal to answer said questions based upon said privilege against self-incrimination was unwarranted in law, and to further direct and order the said witness to return to the Grand Jury and answer the said questions before the Grand Jury.

Upon such application the witness appeared before the Court in person and by his attorney, and the District Attorney of Kings County and said Grand Jury appeared by DAVID H. KATZ, Assistant District Attorney. After hearing the said attorneys in support of their respective positions, the Court on the 30th day of April, 1970, after due deliberation overruled the claim of privilege against self-incrimination of the said witness, and the COURT, thereupon, in open Court, directed and ordered the said witness to return to the said Grand Jury to answer the said pertinent, relevant and material questions. The said witness thereupon in open court, did wilfully disobey the Court's lawful mandate to return to the Grand Jury and answer the pertinent, relevant and material questions.

NOW, on motion of EUGENE GOLD, District Attorney of Kings County, it is ordered and adjudged that the said witness, PHILIP RASTELLI by reason of the particular circumstances of his offense hereinabove set forth for his contumacious and unlawful refusal after being sworn as a witness to answer any legal and proper interrogatories and for his wilful disobedience to the lawful mandate of this Court to return to Grand Jury and testify committed a criminal contempt of Court in the immediate view and presence of the Court and that said contempt was wilful

and unlawful and in violation of Section 750 of the Judiciary Law of the State of New York;

And it is further ordered and adjudged that for the said criminal contempt of court, the said PHILIP RASTELLI be imprisoned in the Civil Prison of the City of New York for a term of thirty days and in addition thereto to pay a fine of $250.00 and in the event that the said PHILIP RASTELLI shall fail to pay the fine of $250.00 herein assessed against him, that he shall be imprisoned for an additional term of thirty days.

And it is further ordered that the Sheriff of the City of New York or his duly authorized agent is authorized and directed at any time upon written request of the District Attorney of Kings County, to deliver the said witness to a police officer of the City of New York for the purpose of taking him to court or to the office of the said District Attorney or to any other place designated by the District Attorney and thereafter returning the said witness to the said Civil Jail.

And it is further ordered and adjudged that the Sheriff of the City of New York or his duly authorized agent, execute this commitment order and imprison the said PHILIP RASTELLI pursuant to this order of commitment. (See Minutes of 4/30/70.)

Enter:

JULIUS HELFAND,
J.S.C.

Dated: Brooklyn, New York
April 30, 1970

Granted: April 30, 1970
ANTHONY N. DURSO

APPENDIX C

U.S. Constitution, Amendment V:

"No person . . . shall be compelled in any criminal case to be a witness against himself . . ."

APPENDIX D

U.S. Constitution, Amendment VI:

"In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."

APPENDIX E

U.S. Constitution, Amendment XIV:

"Section 1 * * * nor shall any State deprive any person of life, liberty, or property, without due process of law * * *."

APPENDIX F

New York Judiciary Law, Section 750

"A. A court of record has power to punish for criminal contempt, a person guilty of any of the following acts, and no others:

"* * * 5. Contumacious and unlawful refusal to be sworn as a witness, or after being sworn, to answer any legal and proper interrogatory."

APPENDIX G

Affidavit in Opposition to Motion to Punish for Contempt

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF KINGS

In the Matter of the Application

of

EUGENE GOLD, DISTRICT ATTORNEY OF THE COUNTY OF KINGS, FOR AN ORDER DIRECTING

PHILIP RASTELLI

A WITNESS BEFORE A KINGS COUNTY GRAND JURY TO RETURN TO THE GRAND JURY AND ANSWER PROPER AND LEGAL INTERROGATORIES OR IN THE EVENT THE WITNESS SHOULD REFUSE TO OBEY SAID DIRECTION PUNISHING THE WITNESS FOR A CRIMINAL CONTEMPT FOR A WILFUL, CONTUMACIOUS AND UNLAWFUL REFUSAL TO OBEY A DIRECTION OF THIS COURT TO RETURN TO SAID GRAND JURY AND ANSWER PROPER AND LEGAL INTERROGATORIES

STATE OF NEW YORK,
COUNTY OF KINGS, *ss.*:

PHILIP RASTELLI, being duly sworn, deposes and says:

I am the witness above named. I make this affidavit in opposition to the motion made by the District Attorney of

Kings County to punish me for contempt. I was subpoenaed to appear before a Grand Jury in Kings County. This is the second such subpoena I have received from this County in the past two years. I appeared on a number of adjourned dates. I am advised and verily believe that the stated function of the Grand Jury was to investigate crimes of conspiracy to commit murder and other related crimes in Kings County as part of an alleged struggle to succeed one Joseph Bonanno as head of an organized crime syndicate in Kings County. This, I am advised and verily believe, was garnered for the first time on my behalf from the moving papers which seek to punish me for contempt. The last of my appearances before this Grand Jury was on February 5, 1970. It is as a result of the appearance on this date that the instant motion was made to punish me for contempt.

At the same time that I was subpoenaed to appear before the Kings County Grand Jury, I was also to appear before the Nassau County Grand Jury. The stated purposes of the Nassau County Grand Jury was to investigate crimes of murder in the first degree and other crimes in violation of the Penal Law of the State of New York in order to succeed one Joseph Bonanno, also known as Joe Bananas in an organized crime syndicate. I appeared before the Nassau County Grand Jury for the last time on January 16, 1970 and as a result of that appearance and my assertion of my Fifth Amendment privileges, I was adjudicated in contempt of Court and sentenced to thirty (30) days imprisonment which term I have just concluded serving.

This Motion

I respectfully request this Court to deny the instant motion to punish me for the following reasons:

At the time of my being subpoenaed before this Grand Jury I was obviously the target of this investigation. Albeit, I was offered immunity. The purpose and motive in offering me this immunity was in effect to provide a basis for the District Attorney to punish me either for contempt or for perjury when in fact he had no evidence of my committing any substantive crime. I, therefore, would request the privilege of being returned to the Grand Jury with my counsel present in the Grand Jury at the time that I am being called upon to testify in the same way that I would be entitled to have my counsel present when I am being questioned in connection with any substantive crime.

As an additional basis for the denial of this motion I submit to this Court that the sole purpose of this Grand Jury proceeding was as previously indicated, to either punish me for contempt or to see if a basis for the perjury could be established.

I have been advised and verily believe that a Grand Jury is empowered to investigate crime and to grant immunity to witnesses in furtherance of such investigation. However, the record is quite clear that the purpose of these proceedings was not to investigate crime or to afford witnesses immunity in order to further the investigation, but to establish a basis to incarcerate me. It must be apparent to all concerned that the District Attorneys of Kings County and Nassau County were aware of each others proceedings and were in constant communication concerning the progress of their respective proceedings. The identity of their respective proceedings has already been indicated in this affidavit by the reference to the stated purpose of both of their investigations and the identity of the stated purposes. Their overlapping and

identical nature will be further pointed out if indeed they they need be, by reference to the questions before the respective Grand Juries. However, the main thrust of this contention is that when I was called to testify on February 5th in Brooklyn, the District Attorney's Office in this County was already aware that I had asserted my Fifth Amendment privileges to the identical questions they asked me before the Nassau County Grand Jury. Thus, by no stretch of the imagination or under any color of right could they possibly contend that by asking me these questions in Kings County they were seeking to further the investigation. It must, therefore, become apparent that they were seeking merely to incarcerate me when I reasserted my constitutional privilege. Thus, what I am submitting to this Court is that the Grand Jury in Kings County was not acting in good faith, was not in fact conducting an investigation, but was merely seeking to subvert their power to punish me for contempt because they knew what my position was going to be. This in effect was a planned harassment and not within the power of the Grand Jury.

As a further demonstration of the lack of good faith on the part of the Grand Jury and as illustration of another basis for the denial of this motion, profitable recourse must be had to the questions actually put to me before the respective Grand Juries. For ease of reference I will set forth photostatic copies of the actual pages of the questions before the respective Grand Juries. I will refer to the questions before the Brooklyn Grand Jury by the letters of the alphabet and the identical questions before the Nassau Grand Jury by number. In Brooklyn on the February 5, 1970 appearance I was asked on Page 55, "Do you know an individual by the name of Paul Sciacca?", (see Exhibit

"A"). In Nassau County I was asked, "Do you know Paul Sciacca, also known as Paulie Shocks?", (see Exhibit "1"). In Brooklyn I was asked, "Do you know Natale Evola?", (see Exhibit "A"). In Nassau I was asked, "Do you know Natale Evola?", (see Exhibit "2"). In Brooklyn I was asked, "Do you know an individual by the name of Frank Mari?", (see Exhibit "B"). In Nassau I was asked, "Do you know Frank Mari?", (see Exhibit "3"). In Brooklyn I was asked from whom I received the loans of money, (see Exhibits "C" and "D"). In Nassau I was asked to fill out a financial questionnaire concerning my sources of money, (see Exhibit "4").

In short, the questioning was identical and the purpose is manifest. This is borne out by the paucity of the questions actually asked of me in Kings County. The few questions asked me in Brooklyn clearly indicate that information was not being sought in furtherance of an investigation, but merely a quick basis for once again adjudicating me in contempt. I submit that this course of conduct clearly spells out an attempt to subvert my Fifth Amendment privilege to punish me for contempt for asserting this privilege for indeed the Grand Jury in Kings County knew as a result of my Nassau County appearance that I was going to assert my privilege. They knew the exact questions to which I was going to assert my privilege and merely repeated them. This was done with the intention to punish me for contempt for the assertion of my constitutional right. I have been advised and verily believe that there is language from the highest Court in this State indicating that the questions that I am raising have never been determined. That in addition, there is indication from this same Court that contempt adjudication based on the same re-

fusals and evasions can be so numerous and onerous as to deny due process of the person questioned. I am told that this language is contained on Page 713 of a case called *Second Additional Grand Jury* v. *Cirillo,* which is reported in 237 N.Y.S.2d 713.

It is respectfully submitted that this motion be denied or in the alternative, a hearing be ordered to determine whether in fact this investigation in Brooklyn and this contempt proceeding is done in good faith or based on a program to harass and punish me for asserting my Fifth Amendment rights.

/s/ PHILIP RASTELLI
Philip Rastelli

Sworn to before me this
23rd day of March, 1970

GUSTAVE H. NEWMAN
Notary Public, State of New York
No. 30-2879625
Qualified in Nassau County
Commission Expires March 30, 1971

APPENDIX H

Grand Jury Proceedings, Nassau County, January 16, 1970

PHILIP RASTELLI, recalled as a witness, having been previously duly sworn by the Foreman, testified further as follows:

By Mr. Levy:

Q. Mr. Rastelli, be seated, please and state your name for the record. A. Again? I just did that before.

Mr. Levy: Mr. Foreman?

The Foreman: Please state your name. I direct you to state your name.

A. Philip Rastelli, 97-20 57th Avenue, Corona, Queens.

By Mr. Levy:

Q. All right. I remind you that you're still under oath. Do you understand that? A. I understand that.

Mr. Levy: All right. Mr. Foreman, has the Grand Jury made a determination as to whether to grant this witness immunity?

The Foreman: Yes, we have, Mr. District Attorney.

Mr. Rastelli, in view of the fact that on November 20th you had direction to obtain counsel and appear before the court and did so, we have decided to grant you full immunity, which I am going to give you now.

Mr. Rastelli, this Grand Jury confers full and complete immunity upon you from an indictment or prosecution and from subjection to penalty or forfeiture for any act or transaction, matter or thing concerning which you may give answers or produce evidence, and that no such answer given by you or evidence produced by you shall be received against you in any way in any criminal proceeding.

But in doing this we have to point out to you that the grant of immunity just conferred upon you by the Grand Jury does not prohibit you from being prosecuted or being subjected to penalty or forfeiture for any perjury or any contempt committed by you in answering or failing to answer or in producing or failing to produce evidence.

Mr. District Attorney, this Grand Jury directs you to question the witness.

By Mr. Levy:

Q. Did you understand what the Foreman told you, Mr. Rastelli? A. Yeah. Is that statewide this immunity? Does it cover the federal government, too?

Q. Under the cases that have been decided both in the federal courts as well as the state courts, the law is that your testimony here cannot be used against you to find an indictment against you by either the federal law enforcement agencies and federal grand juries, nor by state law enforcement agencies nor state grand juries with the exception that if you commit perjury before this Grand Jury, in that you lie to this Grand Jury, then that testimony can be used against you in a perjury indictment arising from your appearance before the Grand Jury, or if you willfully

refuse to answer the questions put to you by this Grand Jury you may be held in contempt of this Grand Jury and of the County Court.

Did you understand that? A. Yes.

Q. Are you prepared to testify at this time? A. Well, you ask the questions and see what I tell you.

Q. Do you know Natale Evola? A. I'm not answering no questions without my lawyer and I stand on the Fifth Amendment.

The Foreman: You're directed to answer the question.

The Witness: I respectfully refuse to answer on the grounds that it might tend to incriminate me.

By Mr. Levy:

Q. Do you know Nicholas Marangello? A. I refuse to answer on the grounds it may tend to incriminate me.

The Foreman: Mr. Rastelli, this Grand Jury directs you to answer that question.

The Witness: I'm sorry, sir, and I stand on my right that I refuse to answer on the grounds it may incriminate me.

By Mr. Levy:

Q. Mr. Rastelli, in response to the other questions that I'm going to put to you, if you're going to persist to refuse to answer, if you'll just state that you refuse to answer on the same grounds, that will be sufficient. A. Yes, all right, then.

Q. Do you know Anthony Licci, also known as Tony Licci? A. I refuse to answer on the same grounds.

The Foreman: We direct you to answer that question.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. On May 6th, 1968 did you meet with Natale Evola, Nicholas Marangello, Anthony Licci and Frank Mari at the Italian-American Veterans' Club, 43 Madison Street, Manhattan? A. I refuse to answer on the same grounds.

The Foreman: We direct you to answer the question.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. Do you know Frank Mari? A. I refuse to answer on the same grounds.

The Foreman: You're directed to answer that question, Mr. Rastelli.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. Do you know Mike Adamo? A. I refuse to answer on the same grounds.

The Foreman: You're again directed to answer the question.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. Do you know Jane Mari? A. I refuse to answer on the same grounds.

The Foreman: We direct you to answer that question.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. Do you know Grace Adamo? A. I refuse to answer on the same grounds.

The Foreman: This Grand Jury directs you to answer the question.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. Do you know James Escopia? A. I refuse to answer on the same grounds.

The Foreman: You're directed to answer the question, sir.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. Do you know James Episcopia, also known as Jimmy Legs? A. I refuse to answer on the same grounds.

The Foreman: We direct you to answer the question.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. Do you know Chickie Escopia? A. I refuse to answer on the same grounds.

The Foreman: You're directed to answer the question.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. When was the last time that you saw Grace Adamo? A. I refuse to answer on the same grounds.

The Foreman: You're directed to answer that question, sir.

The Witness: I refuse to answer on the same grounds. Of course, I refuse respectfully, I want you to know that, sir.

By Mr. Levy:

Q. When was the last time that you saw James Episcopia, also known as Jimmy Legs? A. I refuse to answer on the same grounds.

The Foreman: You're again directed to answer the question, sir.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. When was the last time that you saw Frank Mari? A. I refuse to answer on the same grounds.

The Foreman: We again direct you to answer the question.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. When was the last time you saw Michael Adamo? A. I refuse to answer on the same grounds.

The Foreman: You're directed to answer that question, sir.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. When was the last time that you saw Joe Mari? A. I refuse to answer on the same grounds.

The Foreman: You're directed to answer the question.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. Did you know Sam Perrone, also known as Hank Perrone? A. I refuse to answer on the same grounds.

The Foreman: The Grand Jury directs you to answer that question.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. Have you ever heard of a criminal organization and syndicate commonly known as the Cosa Nostra? A. Refuse to answer on the same grounds.

The Foreman: You're directed to answer the question.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. Have you ever been a member of a criminal organization and syndicate commonly known as the Cosa Nostra? A. I refuse to answer on the same grounds.

The Foreman: Grand Jury directs you to answer that question.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. On May 6th, 1968 in the presence of Natale Evola, Nicholas Marangello, Anthony Licci and Frank Mari at the Italian-American Veterans' Club, 43 Madison Street, Manhattan, did you talk about the sale and importation of narcotics? A. I refuse to answer on the same grounds.

The Foreman: You're directed to answer the question, sir.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. Do you know Paul Sciacca, also known as Paulie Shocks? A. I refuse to answer on the same grounds.

The Foreman: You're directed to answer that question.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. Do you know Gaspar DeGregorio? A. I refuse to answer on the same grounds.

The Foreman: We direct you to answer that question.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. Do you know Joseph DeFilippi? A. I refuse to answer on the same grounds.

The Foreman: You're directed to answer that question, sir.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. Have you ever been to Montreal, Canada? A. I refuse to answer on the same grounds.

The Foreman: You're directed to answer the question.

The Witness: I refuse to answer on the same grounds.

By Mr. Levy:

Q. When was the last time that you were in Montreal, Canada? A. I refuse to answer on the same grounds.

The Foreman: We again direct you to answer the question.

The Witness: I refuse to answer on the same grounds.

The Foreman: Mr. Rastelli, you've been advised of the scope of this Grand Jury investigation and have been conferred with full and complete immunity by this Grand Jury. The Grand Jury finds it necessary and material to direct that you be served with a subpoena duces tecum requiring you to produce certain books, records and papers relating to your income, finances and sources of income.

The purpose of requiring production of these books, records and papers and eliciting testimony and a financial questionnaire from you in connection with your income, finances and sources of income, is to ascertain whether any of your income has, in fact, been derived from, and is a result of the criminal activities this Grand Jury is investigating and for which you have been conferred with full and complete immunity.

Mr. District Attorney, the Grand Jury directs you to serve the witness with the subpoena duces tecum and the financial questionnaire.

Mr. Levy: May the record reflect that the witness was served with a subpoena duces tecum for the production of certain financial records listed in the subpoena, returnable February 6th, 1970.

I offer the original in evidence.

(Document referred to received in evidence and marked Grand Jury Exhibit 111.)

Mr. Levy: May the record reflect that a copy of Grand Jury Exhibit 103 was delivered to the witness.

The Foreman: Mr. Rastelli, the Grand Jury further directs you to prepare that financial statement and deliver it to the Grand Jury on February 6th, 1970.

In addition, since you've not obtained counsel since November 20th, we are further directing you to appear before the court in this building, January 22nd, with counsel.

Mr. District Attorney, in the event Mr. Rastelli does not have counsel at that time we respectfully request that the court appoint counsel for Mr. Rastelli.

Mr. Levy: The wishes of the Grand Jury will be conveyed to Judge Kelly, Mr. Foreman.

The Foreman: Mr. District Attorney, we are further directing that Mr. Rastelli be served with a subpoena to reappear before this Jury on Friday, the 23rd of January at 9:30 A.M.

Mr. Levy: May the record reflect that the witness was served with a subpoena directing his appearance before the Grand Jury on Friday, January 23rd, 1970 at 9:30 A.M.

Is the witness excused now, Mr. Foreman?

The Foreman: Mr. Rastelli is excused.

Mr. Levy: Do you understand one thing, Mr. Rastelli, that you're due down before Judge Kelly next Thursday morning, January 22nd, at 9:30 in the morning.

You understand that, sir?

The Witness: I understand.

APPENDIX I

Grand Jury Proceedings, Kings County, February 5, 1970

PHILIP RASTELLI, residing at 9720 57th Avenue, Corona, New York, having been called as a witness, having been duly sworn, testified as follows:

By Mr. Katz:

Q. You previously testified before this Grand Jury, is that correct, sir? A. Yes, sir.

Q. In relation to certain questions you refused to answer, the District Attorney has given you a week's time to think over whether you would like to answer those questions or not. We believe you also wanted an adjournment to obtain counsel. Have you obtained counsel? A. Yes. Mr. Newman.

Q. Of 186 Joralemon Street? A. Yes.

Q. Mr. Rastelli, you have been informed of the purpose of this investigation, which is into the alleged take over of a crime syndicate in the County of Kings and other related crimes, such as bookmaking and trafficking in narcotics and infiltrating legitimate business. Also this Grand Jury believes you may have information which may aid us in our investigation. I am going to inform you of your rights. You have the Fifth Amendment privilege against self incrimination. You also have a right to have an attorney present outside the Grand Jury room and this Grand Jury has the right to grant you immunity, which I believe, they have done on a previous occasion. This means that any question that you answer, which in answering, you

admit to a crime, you cannot be convicted of that crime if your answer was relevant to this question. You have received Transactional Immunity under Section 619C & D. I am going to ask you a series of questions. Do you know an individual by the name of Carlo Gambino? A. I refuse to answer on the ground that it may tend to incriminate me.

Q. In other words, the Fifth, Sixth and Fourteenth Amendment? A. Yes. I do this with respect to the Grand Jury and District Attorney.

Q. Do you know an individual by the name of Paul Sciaeca? A. I refuse to answer.

Q. Natale Evola? A. I refuse to answer on the same grounds.

Q. On your previous appearance before this Grand Jury, you testified that you were unemployed. You have no source of income and that you receive loans in order pay your rent, buy your clothes, etc., and I had asked you from whom did you receive these loans of money and you refused to answer that question. I am again going to ask that question. From whom did you receive loans of money? A. I refuse to answer. I have a lien pending with the government.

Mr. Katz: At this time I am going to ask you to be excused from the Grand Jury. I am going to ask the Grand Jury to vote on granting you immunity and then I will ask you some more questions and, if you refuse to answer, the District Attorney will take further legal action if he deems it necessary. Please wait outside.

[Witness leaves room]

Mr. Katz: I respectfully request the members of the Grand Jury to consider the granting of immunity to this witness.

[At this time the Assistant District Attorney and the Grand Jury stenographer, leave the Grand Jury room.]

[At this time the Assistant District Attorney and the Grand Jury stenographer return to the Grand Jury room.]

Mr. Katz: Mr. Foreman, has the Grand Jury considered the granting of immunity to this witness?

The Foreman: This Grand Jury has granted immunity to the witness.

Mr. Katz: How was the vote, sir?

The Foreman: Unanimous.

By Mr. Katz:

Q. Mr. Rastelli, this Grand Jury has granted you immunity under the Code of Criminal Procedure of the State of New York, Section 619 C & D, which means that if your answers to the questions are relevant and you admit to a crime, you can never be prosecuted for that crime in the State of New York. Do you understand that? A. Yes.

Q. Mr. Rastelli, you have previously told us that you have received loans of money to pay your expenses. From whom did you receive the loans of money? A. I refuse to answer on the ground that it may tend to incriminate me.

Q. Do you know an individual by the name of Carlo Gambino? A. I refuse to answer on the same grounds.

Q. Do you know Paul Sciacca? A. I refuse to answer on the same ground.

Q. Jimmy Failla also known as Jimmy Brown? A. I refuse to answer on the same ground.

Q. Do you know Philip Rastelli? A. That's me.

Q. I would like to inform you that answering to your own name cannot incriminate you and it has been decided in court and makes common sense. If I continue asking you questions about your finances or other individuals, would you continue to refuse to answer the questions even though you have been granted immunity? A. I respectfully refuse to answer on the same grounds.

Mr. Katz: I am informing you at this time that since you have been granted immunity, if you refuse to answer, there are two crimes that you may be subjecting yourself to; criminal contempt for perjury, and the only way you can perjure yourself is if you answer questions, which you are not, and leaves contempt. If you refuse to answer and do not cooperate with the Grand Jury, after being granted immunity, you may be subjecting yourself to prosecution for contempt under the judicial law of the State of New York, Section 750, which means a possibility of 30 days in jail or a fine of $250 or a combination of both. This is civil contempt. Also, under the penal law of the State of New York, Section 215.50, that is criminal contempt, you may be eligible to receive a sentence if indicted by the Grand Jury of up to one year in jail or a fine of $500 or a combination of a fine and sentence, depending on what the judge in the case will do. I am informing you of the possible penalties involved for refusing to answer questions before a Grand Jury. Do you

By Mr. Katz:

Q. Do you know an individual by the name Carlo Gambino? A. I refuse to answer on the same grounds.

Q. Do you know an individual by the name of Paul Sciacca? A. I respectfully refuse to answer on the same ground.

Q. Do you know an individual by the name of Joseph Columbo? A. I refuse to answer on the same ground.

Q. Do you know an individual by the name of Frank Mari? A. I refuse to answer on the same ground.

Q. Do you know an individual by the name of James Failla? A. I refuse to answer on the same ground.

Mr. Katz: Mr. Rastelli, at this time I am going to excuse you from this Grand Jury and resubpoena you for February 24, 1970. In the meantime, you will have an opportunity to consider whether you would like to answer the questions and consult with your attorney. You are excused.

[Witness excused]

[IN PART]

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 594

PHILIP RASTELLI,

Petitioner,

—against—

THE PEOPLE OF THE STATE OF NEW YORK,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

October Term, 1970

No. 594

PHILIP RASTELLI,

Petitioner,

—against—

THE PEOPLE OF THE STATE OF NEW YORK,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Statement

Petitioner seeks a writ of certiorari in order to review an order of the Appellate Division of the Supreme Court of the State of New York, Second Department, dated June 15, 1970, which affirmed an order of the Supreme Court of Kings County, Criminal Term, Part I, dated April 30, 1970, adjudging petitioner in Contempt of Court under Section 750 of the Judiciary Law of the State of New York.

Jurisdiction

The jurisdiction of this Court is sought to be invoked under 28 U.S.C. Section 1257 (3) and Rule 19 subdivision I of the rules of this Court.